

USDS SDNY  
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Defendants.

ORDER

In their letter, Defendants assert they are entitled to summary judgment on Plaintiff's claims because of the res judicata effect of prior legal proceedings between the parties in France and request a pre-motion conference. Plaintiff claims that the resolution in the French proceedings has no res judicata effect on the current litigation because the retaliation claims asserted in this case were not at issue in the French proceedings. Both parties attached submissions from their experts on French law, opining on the matters that were presented and ultimately decided in the French proceedings as those matters relate to the res judicata issue

in the case before this Court.

Upon review of the parties' submissions, and in light of applicable principles and authority regarding res judicata, the Court finds Plaintiff's arguments, and the submission of its French law expert, persuasive. The Court would be inclined to accept and credit the analysis and opinion of Plaintiff's French law expert over that of Defendants'. The Court also rejects Defendants' other arguments and the authority they rely upon in support of applying the res judicata doctrine or principles of comity to dismiss this case.

The Court expressed its view to the parties during a telephone conference on August 12, 2009. The Court indicated that the filing of a full summary judgment motion on this issue would be unproductive. Of course, it is Defendants' prerogative to file such a motion; however, the Court cautioned that should Defendants choose to do so and not prevail, upon the eventual resolution of the case, the Court may consider it warranted to shift the costs associated with the response to such a motion to Defendants, or other sanction, as appropriate. Accordingly, Defendants' request

for a pre-motion conference on their proposed summary judgment motion is denied.

**SO ORDERED.**

Dated: New York, New York  
18 August 2009

A handwritten signature in black ink, consisting of several fluid, overlapping loops and a final horizontal stroke.

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Victor Marrero  
U.S.D.J.